Ray C. Lapp Air Conditioning, Inc. *and* Sheet Metal Workers' International Association, Local Union 100.[1] Case 5–CA–14197

15 May 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 18 November 1982 Administrative Law Judge Sidney J. Barban issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions[2] and to adopt the recommended Order.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and hereby orders that the Respondent, Ray C. Lapp Air Conditioning, Inc., Cumberland, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Sheet Metal Workers' International Association, Local Union 100, by refusing to furnish the information sought by the Union, as stated below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL, on request, furnish to Sheet Metal Workers' International Association, Local Union 100 the information sought by the Union in its letters to the Company dated 29 December 1981 and 15 January 1982, including information concerning the ownership, operational, and business relationships between the Company and Weathervane, Inc.

RAY C. LAPP AIR CONDITIONING, INC.

DECISION

STATEMENT OF THE CASE

SIDNEY J. BARBAN, Administrative Law Judge: This matter was heard at Baltimore, Maryland, on September 17, 1982, on a complaint issued May 4, 1982, based on a charge filed by Sheet Metal Workers' International Association, Local Union 102[1] on March 25, 1982. The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (herein the Act), by failing and refusing to furnish to the Union certain requested information alleged to be necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of employees in an appropriate bargaining unit. The answer to the complaint denies the unfair labor practices alleged, but admits allegations sufficient to justify the assertion of jurisdiction in this matter (the Respondent, with an office and place of business at Cumberland,

[1] The name of the Charging Party, formerly Local Union 102, has been amended to reflect its merger with Local Union 100 of the same International.

[2] In par. 2 of the "Analysis and Conclusions" section of his decision, the judge cited *Pacific Aggregates*, 231 NLRB 214 (1977), to support the proposition that "if Respondent and Weathervane constitute a single employer, or *alter egos*, within the purposes of the Act, employing employees within the appropriate unit, then it would appear that Respondent must comply with the agreement on behalf of all such employees." We agree with the judge's statement, but find *Shellmaker, Inc.*, 265 NLRB 749 (1982); and *Peter Kiewit Sons' Co.*, 206 NLRB 562 (1973), vacated on other grounds 518 F.2d 1040 (D.C. Cir. 1975), affd. in part, vacated in part, and remanded 425 U.S. 800 (1976), more directly in point as legal authority.

In affirming the judge's decision, Chairman Dotson and Member Dennis do not rely on any implication in *Associated General Contractors of California*, 242 NLRB 891, 893 (1979), enfd. as modified 633 F.2d 766 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981); and *Leonard B. Hebert, Jr., & Co.*, 259 NLRB 881, 886 (1981), enfd. 696 F.2d 1120 (5th Cir. 1983), cert. denied 114 LRRM 2567, 104 S.Ct. 76 (1983), that the information the Union sought in this case would be presumptively relevant because it enables the Union to evaluate whether Weathervane's operations are so interrelated with the Respondent's operations that Weathervane's employees should be included in the same bargaining unit. Instead, they find that a union must demonstrate reasonable or probable relevance whenever the requested information ostensibly relates to employees outside the represented bargaining unit even though the information may show ultimately that the employees are part of the bargaining unit because of the existence of a single employer or an alter ego relationship.

Member Zimmerman does not find that *Associated General Contractors* and *Leonard B. Hebert, Jr.*, imply that the information the Union sought here is presumptively relevant without the Union first having to demonstrate its relevance. To the contrary, both cases make clear that a union must establish a good-faith belief that employees may have been excluded improperly from the bargaining unit in order to demonstrate the "reasonable or probable relevance" of the information requested. See *Leonard B. Hebert, Jr.*, at 884–886.

[3] We shall issue a new notice to employees in lieu of that recommended by the judge to conform more closely to the Order.

[1] After the charge in this matter was filed, Local 102 and several other locals of the Sheet Metal Workers' International Association merged into Local 100. It is not disputed, and I find that for the purposes of this proceeding, Local 102 and Local 100 may be treated as the same entity, which will be referred to herein as the Union.

Maryland, while engaged in the fabrication and installation of duct work, in a recent annual period purchased and received materials and supplies at its Cumberland facility valued in excess of $50,000 directly from points and places outside the State of Maryland), and to support a finding that the Union is a labor organization within the meaning of the Act.

On the entire record in this case,[2] and after due consideration of the oral argument made at the hearing and the brief filed by the Respondent, I make the following

FINDINGS AND CONCLUSIONS

The Union, during all times material to this case, has represented and continues to represent certain employees of the Respondent for the purposes of collective bargaining.[3] The Respondent and the Union were parties to a bargaining agreement in 1981, and have completed, or almost completed a successor agreement effective from May 1, 1982, to April 30, 1984.

In 1981, Richard Drake, who was then business agent for Local 102 (and since April 1, 1982, has been business agent and president of Local 100), with his office in the Washington, D.C. area, began receiving reports from various sources in the Cumberland area indicating that the Respondent was involved with another company, Weathervane, Inc., operating out of the same location as the Respondent, but not complying with the union agreement to which the Respondent was a party.[4]

Drake testified that he heard rumors "through the building trades" (I assume this refers to either the Building Trades Council or individual building trades unions) that the Respondent was operating "two companies," and had reports from a union agent on the scene stating from personal observation and contacts with employees that Respondent was operating "two businesses from the same location." He then had another agent secure from the Maryland State Department of Assessments and Taxation copies of reports filed by both the Respondent and Weathervane, which show that the Respondent was incorporated on April 1, 1968, and Weathervane on May 26, 1969, that both are engaged in the business of "Air Conditioning," and both are located on Blackiston Street in Cumberland. The reports show that the president and vice president of the Respondent are Ray C. Lapp and Annabelle G. Lapp, respectively, and the directors of the Respondent are Ray C. Lapp, and Annabelle G. Lapp, and Thomas Lapp; that the president, vice president, and secretary respectively, of Weathervane are Annabelle M. Lapp, Ray C. Lapp, and Annabelle G. Lapp, and that the directors of that company are A. G. Lapp, R. C. Lapp, and R. Wilson. It appears that all of these line in Cumberland, except possibly R. Wilson, for whom no address is given.

On December 29, 1981, Drake wrote the Respondent in material part as follows:

> In order to enable Sheet Metal Workers' Local 102 to fully apply and enforce the terms of its collective bargaining agreement with Ray C. Lapp Air Conditioning, Inc., and to serve in its capacity as bargaining agent of the sheet metal workers employed by your firm, we are requesting that you provide the following information concerning a possible connection between Ray C. Lapp Air Conditioning, Inc., and a firm known as Weather Vane Company, Inc. We assure you that this information is sought solely to enable us to apply and enforce the terms of our collective bargaining agreement with you. . . . We ask only to ensure that all employees represented by Local 102 have their terms and conditions of employment governed by our current collective bargaining agreement. We feel that we are entitled to the following information under the terms of the National Labor Relations Act.
>
> Please provide the following information:
>
> 1. State whether any officer or director of Ray C. Lapp Air Conditioning, Inc., occupies any position as officer, director or employee of the Weather Vane Company, Inc.
> 2. State whether any shareholders of stock in Ray C. Lapp Air Conditioning, Inc., serve as shareholders of Weather Vane Company, Inc., or hold or occupy any position as officer or employee of Weather Vane Company, Inc.
> 3. State whether any officer or director of Ray C. Lapp Air Conditioning, Inc. owns stock in Weather Vane Company, Inc. and, if so, what percentage of stock is owned by that Individual.
> 4. State whether any officer or director of Ray C. Lapp Air Conditioning, Inc. has served as supervisor of employees employed by Weather Vane Company, Inc.
> 5. State whether Weather Vane Company, Inc. has sub-contracted any work from Ray C. Lapp Air Conditioning, Inc., within the trade and territorial jurisdiction of Local 102.
> 6. State whether any contracts between Ray C. Lapp Air Conditioning, Inc. and any other contractor have been assigned to the Weather Vane Company, Inc. Also state whether any contracts between the Weather Vane Company, Inc. and other contractors have been assigned to Ray C. Lapp Air Conditioning, Inc.

[2] The General Counsel's motion to correct the record in this matter, to which no objection has been received, is granted.

[3] The unit covered by the agreements between the Union and the Respondent is as follows:

> All employees of the [Respondent] engaged in . . . (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and of all air-veyor systems regardless of materials used including the setting up of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all airhandling euipment [sic] and duct work; (d) the preparation of all shop and field sketches used in fabrication and erection, including those taken from original archtectural and engineering drawings or sketches, and (e) all other work included in the jurisdictional claims of Sheet Metal Workers' International Association.

[4] Thus, Drake testified that as a result of the information which he had received, there "appeared to be violations of the collective bargaining agreement in the areas of rate of pay, benefits, conditions of having members join my Association as a membership, and subcontracting clauses."

7. State whether any employees of Ray C. Lapp Air Conditioning, Inc. have been employed by the Weather Vane Company, Inc., and state the terms of such employment.
8. State whether any equipment, material, supplies or vehicles have been exchanged by and between Ray C. Lapp Air Conditioning, Inc. and Weather Vane Company, Inc. State the rate for compensation for any such exchange of material, equipment, etc.

. . . .

Again, we assure that this information is sought solely to enable Local 102 to apply the terms of its current collective bargaining agreement with Ray C. Lapp Air Conditioning, Inc. and for no other reason.

By letter dated January 8, 1982, the Respondent's president, Ray C. Lapp, responded, disclaiming knowledge of any requirement under the Act to provide the information sought and requesting that the Union provide "specific references."

The Union, in a lengthy letter dated January 15, 1982, replied, in material part:

> We have been advised by our attorneys that our request for information is required under the provisions of Section 8(a)(5) of the Act. . . . I would direct your attention to the case of Doubarn Sheet Metal, Inc.. . . . reported in Vol. 243 of the NLRB Reports as no. 104.
>
> . . . .
>
> We believe that the connection between Ray C. Lapp Air Conditioning, Inc. and Weather Vane Company, Inc. may be sufficient to constitute a violation by Ray C. Lapp Air Conditioning, Inc. of Article 2 of the Standard Form of Union Agreement, which is made applicable here pursuant to Section 2 of the contract [between the parties.][5]
>
> We also feel there may be the basis for a violation of the wage provisions of the current contract and a further violation of the obligation to contribute to the pension, welfare, apprentice and vacation funds pursuant to the terms of the current agreement.
>
> Accordingly, we renew our request to be provided immediately with full and responsive answers to the requests submitted to you previously.
>
> . . . .
>
> Respondent has not supplied the information requested to the Union.

[5] Only the bargaining agreement effective from May 1, 1982, to April 30, 1984, was placed in evidence. Art. II, sec. 1 of that agreement provides, in essence, that the Respondent shall not subcontract or assign covered work to be performed at a jobsite to a contractor who has not agreed in writing to comply with the terms and conditions of the bargaining agreement. Sec. 2 of that article provides, in essence, that the Respondent shall not subcontract prefabrication of covered work to a contractor who does not pay employees engaged in such work the prevailing wage established by the agreement. Considering the nature of these clauses, and in the absence of any contention that these provisions are new or substantially changed from the prior agreement, I infer that these same clauses appeared in the prior agreement.

In negotiations for the 1982–1984 bargaining agreement, the Union asserted that, not having received the information requested, it maintained its position that any agreement reached covering the Respondent was also applicable to Weathervane. Respondent disputed this.

Analysis and Conclusions

During 1981, when the Respondent and the Union were parties to a collective-bargaining agreement providing for wages, benefits, and other conditions of employment of the Respondent's employees represented by the Union, the Union received information from its agents, from other union representatives, and from reports filed with the State of Maryland which indicated that a second company (Weathervane), which was not complying with the union bargaining agreement, was operating out of the same premises and was engaged in the same business as the Respondent, and apparently was being operated by the same, or substantially the same, persons as were operating the Respondent's business. As a result, the Union wrote the Respondent, asking replies to eight specific questions designed to assist the Union in determining whether the Respondent and Weathervane were, for the purposes of the Act, a single employer (or alter egos) obligated to comply with the terms and conditions of the bargaining agreement for all employees described in the contract employed by both companies. Respondent refused to supply the requested information, though assured that the Union needed it in order to administer and enforce the bargaining agreement.

In other similar cases, where the information sought concerning the relationship of an employer party to a bargaining agreement with another employer not in compliance with that agreement has a reasonable, or probable relevance to the union's statutory duty to administer and enforce the bargaining agreement, the Board has held that the employer party to the agreement must supply the information requested. See *Doubarn Sheet Metal*, 243 NLRB 821 (1979); *Leonard B. Hebert, Jr. & Co.*, 259 NLRB 881 (1981); *Associated General Contractors of California*, 242 NLRB 891 (1979). In the present instance, if the Respondent and Weathervane constitute a single employer, or alter egos, within the purposes of the Act, employing employees within the apropriate unit, then it would appear that the Respondent must comply with the agreement on behalf of all such employees. See, e.g., *Pacific Aggregates*, 231 NLRB 214 (1977). Here, the information secured by the Union from other sources clearly indicates that the two companies may, indeed, be a single employer (or alter egos), and justified the Union in seeking relevant information from the Respondent to assist the Union in determining whether its agreement with the Respondent has been violated. Finally, the questions addressed to the Respondent by the Union are well within the ambit of the inquiries found by the Board to be reasonably relevant to a purpose in administering and enforcing a collective-bargaining agreement. See *Doubarn*, supra, *Leonard B. Hebert*, supra; *ACG of California*, supra.

On the basis of the above, and the record as a whole, I find that the Union has shown a reasonable and probable

relevance of the information sought from the Respondent to the Union's statutory duty to administer and enforce its bargaining agreement with the Respondent, and that the Respondent, therefore, in refusing to supply the information sought, violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The bargaining unit set forth in footnote 3 hereinabove is a unit appropriate for collective bargaining within the meaning of Section 9(a) of the Act.
4. At all times material to this proceeding, the Union was and continues to be the exclusive representative of the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
5. The Respondent, by failing and refusing to give the Union the information requested in the Union's letters to the Respondent dated December 29, 1981, and January 15, 1982, with reference to the Respondent's relationships and dealings with Weathervane, Inc., violated Sections 8(a)(1) and (5) of the Act.
6. The aforesaid unfair labor practices affect commerce within the meaning of Sections 2(67) and (7) of the Act.

THE REMEDY

It having been found that the Respondent violated the Act by its refusal and failure to supply the Union with certain information requested in the Union's letters of December 29, 1981, and January 15, 1982, which information is relevant and necessary to the Union's obligation to represent the employees in the contractual bargaining unit, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, Ray C. Lapp Air Conditioning, Inc., Cumberland, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Sheet Metal Workers International Association, Local Union 100, the Union herein, as the exclusive bargaining representative of its employees in the appropriate bargaining unit set forth in footnote 3, above, by refusing or failing to furnish the Union or its agents, on request, the information set forth in the Union's letters to the Respondent dated December 29, 1981, and January 15, 1982, including the following: advising (1) whether any officer or director of the Respondent occupies any position as officer, director, or employee of Weathervane, Inc., herein Weathervane; (2) which, if any, shareholders of stock in the Respondent serve as shareholders of Weathervan; (3) whether any officer or director of the Respondent owns stock in Weathervane and, if so, what percentage of stock is owned by that individual; (4) whether any supervisor employed by the Respondent has served as supervisor of employees employed by Weathervane; (5) whether Weathervane has subcontracted any work from the Respondent within the trade and territorial jurisdiction of the Union; (6) whether any contracts between the Respondent and any other contractor have been assigned to Weathervane, and also whether any contracts between Weathervane and any other contractor have been assigned to the Respondent; (7) whether any employees of the Respondent have been employed by Weathervane and the terms of such employment; (8) whether any equipment, material, supplies, or vehicles have been exchanged by and between the Respondent and Weathervane and, if so, the rate for compensation for any such exchange. Such information shall be brought up to date until the time such information is furnished to the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the purposes of the Act.

(a) Furnish to the Union, on request, the information referred to an set forth above in section 1(a) of this Order.

(b) Post at its operations at Cumberland, Maryland, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."